

# **BOARD OF PESTICIDES CONTROL**

**January 23, 2004**

Kennebec Room, Ramada Inn  
357 Odlin Road, Bangor

## **AGENDA/MINUTES**

**9:30 A.M.**

The regular monthly meeting was called to order at 9:30 A.M. by Chair Carol Eckert. Other members in attendance included Berry, Dann and Jemison. Bradstreet, Humphreys and Walton were unable to attend.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the December 19, 2003 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Batteese pointed out Randlett had detected three errors that included changing frye to fry and noting to nothing on page 3, and inserting the word resource between natural and agency on page 8.

Dann/Berry: Motion made and seconded to approve the minutes as amended.

In Favor: Unanimous

3. Section 18 Emergency Registration Request for Fomesafen to Control Broadleaf Weeds in Dry Beans

In six of the past eight years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of fomesafen (Reflex 2LC) to control broadleaf weeds in dry beans. Syngenta submitted a tolerance petition to EPA in 2000 but there is still no expectation the federal agency will approve a full Section 3 registration before the 2004 growing season. The Cooperative Extension's Vegetable Specialist has therefore requested that the Board petition for a Section 18 registration in 2004 so growers may control redroot pigweed, nightshade, wild mustard and common ragweed in their crops. The University of Maine Scientist also points out that other available herbicides have been ineffective at controlling these problem weeds throughout the past growing seasons, and growers need the product to achieve higher yields and profitability.

Presentation By: Wesley C. Smith  
Pesticides Registrar

Action Needed: Approve/Deny the request to petition EPA for a Section 18  
Registration for fomesafen for Dry Beans.

- ☒ Smith reported on three corrections that had been spotted by Randlett. They included changing 50% to 40% on page 4, changing bee to been on page 8 and deleting a reference to aerial application on the proposed label. Eckert asked why the yield data in the chart did not show greater differences. Mark Hutton, UMCE Vegetable Specialist, explained that the product is only used by a very few growers to rescue fields that have become heavily infested. Thus the overall yields for the total acres grown in the State aren't greatly affected. Jemison related a conversation he had with Lauchlin Titus who anticipated only a couple of growers would need to use the product and that they would lose their crop if the product were not available.

Jemison/Dann: Motion made and seconded to petition EPA for a Section 18  
Registration for fomesafen for Dry Beans.

In Favor: Unanimous

4. Report from Railroad Right of Way Sub-committee on Proposed Monitoring Plan

On September 6, 2002, the Board voted to convene a stakeholders group to collect information on the potential for herbicides applied to railroad rights-of-way to drift or leach from the site. An employee of the Department of Transportation volunteered to form and chair the group that included a broad section of state and federal agencies, public surface water suppliers, rail owners and herbicide application companies. On March 28, 2003, the Board voted that prior to issuing variances for the next year, the railroad applicators would have to submit no later than February 2004 an herbicide residue monitoring plan for drift and soil and water sampling protocols adjacent to and beyond the previously allowed ten foot buffer limits. A sub-committee of the stakeholders group is prepared to recommend a monitoring plan that calls for the collection of 30 drift card samples and 15 water samples split equally over three rail lines and three days of application. In addition, the Portland Water District has agreed to provide their results of water sampling of Sebago Lake adjacent to the Mountain Division rail line in Sebago Lake Village, and the Maine Drinking Water Program has agreed to sample public wells adjacent to tracks receiving herbicide applications.

Presentation By: Robert W. Moosmann  
MDOT Senior Landscape Architect

Action Needed: Discussion and determination if the Board is satisfied with the  
monitoring plan and ready to authorize staff to renew railroad  
right-of-way variances for 2004.

- ☑ Moosmann reported his last subcommittee meeting in December had been contentious with representatives of three railroads asking (1) what right a citizen board had to ask them to fund monitoring, (2) are they chasing a dead horse since the drift cards from 2003 were negative (3) does the Board really know there is a problem, and (4) will the Board be satisfied with one year's sampling if all the results are negative? He estimated the laboratory costs for the proposed sampling plan would be \$6,000 to \$8,500. He also advised that it was the wrong time of year to be seeking grant money for 2004, and pointed out the Mitchell Center was currently taking requests for studies to be conducted in 2005.

Batteese explained that the Board was concerned about both drift and leaching, and that the problems staff experienced in being in the right place at the right time to collect drift cards could account for many of the negative readings in 2003. He also observed the cost divided by five railroads and their primary contractor would be a lot less than having to hire backpack contractors if the buffer was the 50 feet required for all other right of way variances.

Dann announced he would like to see a good faith effort by the railroads and Eckert agreed the staff should assist with sampling and providing supplies. Jemison asked about changing the herbicide mixes and adding drift control agents. Moosmann responded that some railroad managers were agreeable to reducing their use of diuron but did not want to totally eliminate it from their vegetation control programs. Moosmann also described the application procedure with a spotter running ahead of the spray vehicle and having the spray actually shut off 25 to 30 feet before the water crossing. Jennings indicated he was more concerned when the water was parallel to the track.

Randlett stated he did not see any legal issue with the request for monitoring, and Jemison suggested buffers in future variances might be based on the chemical mixes to be applied. Eckert checked with the other members and concluded there was consensus that they liked the proposed monitoring plan and wanted it carried out in 2004. Moosmann indicated he would take those messages back to the subcommittee.

5. Review of Staff's Report on 2003 Drift Study of Two Aerially Applied Blueberry Pesticides

Since 1999, the staff has collected water samples and spray drift cards to determine if aerial pesticide applications to blueberry fields are resulting in drift in the vicinity of the Narraguagus and Pleasant Rivers that support Atlantic salmon populations in Washington County. The staff will detail their efforts and point out several logistical problems that limit their ability to perform this work. In spite of these problems, the staff will report on one series of samples where the site was sprayed on schedule and both the drift cards and water samples showed low levels of phosmet detected 1,000 feet from the targeted blueberry fields.

Presentation By: Heather P. Jackson  
Water Quality Specialist

Action Needed: Discussion and determination if any action is appropriate at this time.

- ☒ Jackson summarized the staff efforts and analytical results of the past season, and pointed out the many logistical problems associated with being located three hours away from the sampling sites. She reported the staff would be studying the possibility of having local people collect samples each day spraying was in progress. If such a group could be assembled, the samples would be immediately frozen and only the samples that correlated with nearby applications would be analyzed. Dann expressed support for such a procedure that bracketed the fungicide and insecticide spray events.

6. Approval of 2003 Blueberry Pest Management Plan for Deblois Critical Pesticide Control Area

In March 1998, the Board adopted an amendment to Chapter 60 to protect the water supply for a state owned fish hatchery in Deblois from pesticide drift and runoff from surrounding blueberry fields. This critical pesticide control area still encompasses all land within 1,000 feet of the hatchery and its rearing pools and the tributary water supplies to both facilities. The rule was restructured to require that pesticide applications be made according to a Board approved pest management plan which may be updated on a regular basis without having to resort to rulemaking each time new products or technologies become available. Since 1998, the Board has annually approved such a plan for the major landowner who is requesting this year's plan only restrict pesticide use within a 500 foot radius of the spring pool and 250 from the stream. This request follows a discussion at last month's meeting where the Board recognized that aerial application practices have improved since 1972, planted tree buffers have now matured, and the fish hatchery will not be in operation in 2004. The plan specifies the remaining land in the critical area will be treated according to Best Management Practices for Wild Blueberry Production.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/disapprove the pest management plan submitted for Jasper Wyman & Son.

- ☒ Batteese explained that the requested plan would cover the blueberry fields within 500 feet of the spring and 250 feet of the stream, and that the area extending out to 1,000 feet would be treated according to best management practices described by the University of Maine Cooperative Extension. As a result of the previously discussed drift study, Dann recommended the plan be conditioned upon Jasper Wyman & Son also developing a drift management plan for the critical pesticide control area. Dave Yarborough, UMCE Blueberry Specialist, observed a blueberry fact sheet already exists to address drift

management and stated he would be willing to assist the company in incorporating appropriate provisions from the fact sheet into a drift management plan.

Dann/Berry: Motion made and seconded to approve the 2004 Pest Management Plan with the condition it would not be effective until Jasper Wyman & Son also submitted a drift management plan for the entire critical pesticide control area.

In Favor: Unanimous

7. Enforcement Action Against Aquacide of White Bear Lake, Minnesota

On December 6, 2002, the Board approved a consent agreement with this firm for selling Aquacide Pellets to Maine citizens without having first registered the product or licensed as a general use pesticide dealer. The consent agreement included a monetary penalty of \$6,000.00 with \$4,500.00 suspended so long as the company complied with all other terms of the agreement. These included registering the product, obtaining the appropriate dealer license and adding a statement to their sales brochure notifying prospective purchasers that the application of aquatic herbicides may require a permit issued by an appropriate state environmental agency. The staff has been monitoring the terms of the agreement and noted that while the company registered the product in 2003 they failed to obtain a restricted use pesticide dealer license in order to sell aquatic herbicides in Maine. Furthermore, the company accepted a telephone order from the Board's Director on August 28, 2003 for 10 pounds of Aquacide Pellets without making any inquiry about licensing. Since the company is not in compliance with the consent agreement or current licensing regulations, the staff is recommending that the case be referred directly to the Office of the Attorney General.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Decision on appropriate enforcement response.

- ☒ Jennings reported that although the company did not respond to a letter Randlett sent them in October they did call after receiving notice the case would be on the agenda for this meeting. Jennings explained they would now like to settle out of court and agree to no longer sell to Maine customers. He recommended that the Board table the topic until he and Randlett could negotiate a new consent agreement. Jemison asked about the suspended penalty from the first consent agreement and Jennings agreed that would be considered during the negotiations.

Dann/Berry: Motion made and seconded to table this matter.

In Favor: Unanimous

8. Adoption of Staff Recommended Amendment to Section 4 of Chapter 41 Dealing with Aquatic Herbicides

At the last meeting, the members reviewed all the comments received on proposals to repeal or amend Section 4 of Chapter 41 that became effective May 12, 2003. The members agreed with a staff analysis of the rule-making record that showed the three proponents of repeal were associated with the sale of pesticides, and that not a single citizen indicated they had been disadvantaged by not being able to purchase aquatic herbicides. The members also noted that 15 people had opposed repeal of the rule and that many of them supported the amendment recommended by staff as a means to prevent illegal use and protect state bodies of water. The Board therefore directed the staff to prepare the alternate amendment to only list herbicide products that are registered in Maine and have aquatic uses on the container's label for potential adoption at the next meeting.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and determination if the members are ready to adopt the amended rule and supporting basis statement.

- ☒ Batteese reminded the members that they needed to be sure the staff had captured their responses accurately in both the summary of comments and the basis statement. Eckert expressed her belief that this had been done.

Berry/Jemison: Motion made and seconded to adopt the amended rule and supporting basis statement.

In Favor: Unanimous

9. Update on Board's Grant to Training and Development Corporation for Farmworker Training

The Board has supported the Migrant and Seasonal Farmworker Program conducted by the Training and Development Corporation (TDC) of Bucksport since 1995. This agency utilizes AmeriCorps members to actually provide the pesticide safety training to migrant and seasonal workers. During the past year, the Board's cost share matching grant of \$3,360.00 supported one full-time member and two summer members. Together, the three members provided 2,275 hours of service to migrant workers involved with agricultural production that included pesticide safety training for 451 adults and 239 children. Currently it does not appear the AmeriCorps program will be funded at the national level for 2004 and TDC is seeking suggestions for alternate funding to enable them to continue to provide some level of Pesticide Safety Training to farmworkers this summer.

Presentation By: Jack Frost

Program Coordinator

Action Needed: Discussion and direction to the staff to continue funding this grant request if alternate funding can also be identified.

- ☒ Frost expressed regret that the AmeriCorps Service would not be funding their farmworker training program in 2004. He noted that Wendy Lord, the full time member, had completed her two-year term of service in 2003. He reminded the members the Board had provided a 15% match in the past year, and informed them it would not be possible for his agency to pick up the balance of the costs previously born by the federal program. He pointed out the two summer members had worked closely with Barbara Ginley at the Maine Migrant Health Program, and hoped that she might be able to support one summer member for 10 weeks during June, July and August when most of the training is needed. He anticipated she would be developing a funding proposal for the next meeting where the Board would likely be asked to contribute between \$3,600.00 and \$3,700.00.

10. Video Segment on Bayscaping from The Maine Outdoorsman Program

The Board's staff continues to collaborate with the Friends of Casco Bay on Bayscaping activities to educate the general public about the need to minimize reliance on pesticides. Recently, the Maine Outdoor Heritage Foundation provided funding to create a 15 minute segment about Bayscaping for The Maine Outdoorsman Program. This program was broadcast on Channel 13 in Portland and cable channels in Bangor, Augusta, Lewiston and Waterville.

Presentation By: Kelly Bourdeau  
Public Information Officer

Action Needed: None, informational only.

- ☒ Bourdeau played the video and afterwards Paul Gregory, DEP, reminded the members it was a legacy of a Board grant to the Friends of Casco Bay four years ago. Eckert asked about exporting it to other bay associations and Fish explained that he and Bourdeau were working with the State Planning Office on such matters. He also noted that during the fall they had made presentations for the Friends of Scarborough Marsh and a group in Wells, and that Jennings had recently spoken at the Congress of Lake Associations' annual meeting.

11. Other Old or New Business

a. Update on Household Hazardous Waste Legislation - R. Batteese

- ☒ Batteese advised that he did not have any new information beyond what was contained in the newspaper article. Jemison inquired if a ten cent surcharge to support

IPM was being considered and Batteese responded that he had not heard it mentioned this session.

b. Update on Consensus-Based Rule Development Process - G. Fish & K. Bourdeau

☒ Fish reported that the committee had met and developed a potential list of exemptions that Jennifer Davis would be asking Mary Ellen Valentine to consider before the next meeting on February 4<sup>th</sup>. He noted that the neighbors were concerned about how any new rule would be enforced and indicated Jennings would be asked to attend one of the next meetings to address that subject.

c. Other ???

☒ Eckert reported she had attended an Environmental Health Conference in Biddeford and had obtained a brochure from Connecticut on organic landscaping.

☒ Sharon Tisher of the Maine Organic Farmers & Gardeners Association referenced a letter sent to all hospitals about adopting an IPM Policy. Batteese explained that Bourdeau had worked with the Bureau of Health to prepare and send a joint letter signed by Dr. Dora Mills and himself.

☒ Batteese also reported that Governor Baldacci should be reposting Dan Simond's name for nomination to the Board in the near future.

12. Schedule and Location of Future Meetings

a. The Board has tentatively scheduled the next meeting for Friday, March 19<sup>th</sup>.

☒ The Board scheduled the next meeting for Friday, March 19<sup>th</sup> in the Augusta area.

b. Location and Dates for Future Meetings?

☒ The Board tentatively scheduled the following meeting for Friday, April 23<sup>rd</sup>.

13. Adjourn

☒ A motion to adjourn was accepted at 12:34 P.M.

Robert I. Batteese, Jr.  
Director



